

JCGQcomO

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 COMMISSIONS IMPORT EXPORT S.A.

5 Plaintiff

6 v.

19 MC 195 (KPF)
Oral Argument

7 REPUBLIC OF THE CONGO, et al.

8 Defendants

9 -----x
10 New York, N.Y.
December 16, 2019
11 11:00 a.m.

12 Before:

13 HON. KATHERINE POLK FAILLA

14 District Judge

15 APPEARANCES

16 GOULSTON & STORRS PC
17 Attorneys for Plaintiff
CHARLES R. JACOB III
ISABEL SUKHOLITSKY

18 ASHCROFT LAW FIRM LLC
19 Attorneys for Defendants
MICHAEL SULLIVAN
KIMBERLY P. WEST

JCGQcomO

1 (Case called)

2 DEPUTY CLERK: Counsel, please state your name for the
3 record beginning with the plaintiff.

4 MR. JACOB: Your Honor, for petitioner, Commissions
5 Import Export, Charles Jacob from Goulston & Storrs.

6 MS. SUKHOLITSKY: Isabel Sukholitsky from Goulston &
7 Storrs.

8 THE COURT: Thank you very much. Good morning to both
9 of you. Just one moment, please.

10 Go ahead. Thank you.

11 MS. WEST: Good morning, your Honor.

12 Kim West with the Ashcroft Law Firm for respondent
13 Republic of the Congo.

14 MR. SULLIVAN: Good morning, your Honor.

15 Michael Sullivan on behalf of the Republic of the
16 Congo with the Ashcroft Law Firm as well.

17 THE COURT: Thank you to both of you.

18 I should ask each table, is there someone to whom I
19 should be directing my questions? Mr. Jacob?

20 MR. JACOB: Yes, to me, your Honor.

21 THE COURT: Thank you.

22 MR. SULLIVAN: And to me, your Honor. I may defer at
23 some moment in time to Ms. West.

24 THE COURT: Thank you.

25 Mr. Jacob, we begin. This is our first, I believe,

JCGQcomO

1 in-person conference in this matter. I am familiar with the
2 docket of the case, having signed some of the orders. What I'd
3 really love to know is now that we have folks here representing
4 the defendant, or at least one of the defendants, that you're
5 on the way to getting your judgment satisfied. So please tell
6 me that we're all done, and it's resolved we can all go home.

7 MR. JACOB: I wish I could, your Honor, but that's not
8 the case.

9 THE COURT: Then tell me the truth. Go ahead.

10 What, if anything, has happened, because one of the
11 things was as we were setting this conference date, there was
12 an appearance by counsel on behalf of one of the defendants and
13 not on behalf of the other. Is that still the case?

14 MR. JACOB: Yes, your Honor. Nothing has really
15 changed except that counsel has appeared. As you know, the
16 clerk entered certificates of default against both the
17 respondents in August. We applied for an order to show cause
18 to get default judgments. Your Honor put that off pending a
19 conference. Immediately before the conference, counsel
20 appeared and we were moved to today, which is fine because it
21 gave the Republic a chance to do something that, very notably,
22 your Honor, it has not done, which is, it has not moved to
23 vacate the clerk's default against it, nor has Ecree, of
24 course, appeared, and they are not here today.

25 They've had plenty of time to move to vacate that

JCGQcomO

1 default having counsel now, and they haven't done so. And we
2 believe that speaks to the situation we find ourselves in,
3 which is that there really is not a defense to the allegations
4 in the petition, and the Republic is essentially stalling for
5 time as it has, for example, in the district court for the
6 District of Columbia, where before Judge Leon they are in
7 contempt of court incurring sanctions of \$80,000 per week for
8 failure to provide discovery of a postjudgment nature.

9 Your Honor, to vacate the clerk's certificate of
10 default, the standard is the same as vacating a default
11 judgment. Under Rule 55 there is a case law to that effect,
12 and we believe it's a reasonable inference that they are not
13 moving to vacate the default because one of the elements --
14 there are others -- but one of the elements to do so is an
15 evidentiary showing on the merits of their defense. And we
16 don't think they can show that, and we don't think there are
17 any volunteers in the Republic of the Congo to sign an
18 affidavit of declaration that what's set forth in the petition
19 is wrong.

20 So, what we would request, your Honor -- since
21 whatever else is true with the Republic, Ecree has defaulted,
22 and it is the owner of the condominium in question, we request
23 that we be permitted to proceed to a default judgment, at the
24 minimum, against Ecree and proceed following that to sale of
25 the condominium. And I'm happy to address the procedures under

JCGQcomO

1 the New York CPLR. Your Honor's order from late August
2 expressed an interest in discussing those. I'm happy to do
3 that, but I thought I should just give you the overview as to
4 where I think we are first, and if you have any questions, I'm
5 happy to answer them

6 THE COURT: We'll talk about the CPLR procedures
7 later. Thank you very much.

8 Mr. Sullivan, is your firm also involved in
9 representing the Republic in the proceedings in the District of
10 Columbia?

11 MR. SULLIVAN: We are not, your Honor, at this point
12 in time.

13 THE COURT: Is there an attorney who is representing
14 the Republic in the proceedings in the District of Columbia?

15 MR. SULLIVAN: Based on my review of the pleadings,
16 I'm not aware there is.

17 THE COURT: I'll ask you to bring the microphone a bit
18 closer to you, sir. Thank you.

19 And your agreement with the Republic doesn't extend
20 there. You are here now.

21 MR. SULLIVAN: Yes.

22 THE COURT: Why are you here now? And I mean that in
23 a very serious way.

24 MR. SULLIVAN: Sure. Absolutely, your Honor.

25 We're here after the meeting with the client, and the

JCGQcomO

1 client expressing to us, consistent with the Republic of the
2 Congo's previous positions, that it has no interest in the
3 condo that's the subject of the requested transfer order.

4 So that's first and foremost, your Honor. We want the
5 Court to be aware of that. It's been previously publicized
6 that the Republic Congress has no interest in the condo. We
7 knew that there was this conference today. We're going to ask
8 the Court to have the default to be removed, and give the Congo
9 an opportunity to file a response to the pleading in the
10 matter.

11 I am confident the Court has read the pleadings in the
12 case. The basis of the claim is as a result of an article from
13 *Global Witness*, which we would suggest, your Honor, is an
14 advocacy, not a news organization. And even if you read some
15 of the allegations in the article, it's insufficient to
16 establish that the Republic of the Congo has any interest in
17 the property, your Honor.

18 THE COURT: I thought there were also reports in the
19 *New York Times*, were there not?

20 MR. SULLIVAN: There were, your Honor. If you read
21 the *New York Times* article closely, essentially all it has done
22 is lifted the representations made in the *Global Witness*
23 report, which form the basis to then send letters to members of
24 Congress and to articles. When I say it formed the basis for
25 *Global Witness* to do those things, consistent to its advocacy

JCGQcomO

position. The funds that are claimed to be the source of the purchase of the condo was as a result of a business transaction between the Republic of the Congo and a Brazilian company, a well-established Brazilian company, a company that's been in the business in Brazil since 1966 that does significant infrastructure and construction projects both in South America as well as in the African continent.

The Republic of the Congo indicates that the payment to the Brazilian company was for services rendered. They did a water project infrastructure within the Republic of the Congo to bring drinking water to a number of villages that were without clean drinking water, and they also did work in constructing, I believe, it's 12 hospitals for the benefit of expanding the reach of medical services in the Republic of the Congo.

So, the payment to the company that they're claiming is the source of the funds ultimately being used to purchase the condo was a direct payment to the company called Asperbras, which is a Brazilian company, your Honor.

THE COURT: Just to spell it for the record,
A-S-P-E-R-B-R-A-S.

MR. SULLIVAN: That's correct, your Honor.

The further claim is that an agent of Asperbras, a gentleman by the name of Mr. Vega, is the person that is the, I guess, legal owner through Ecree of the condo itself. Ecree

JCGQcomO

1 obviously has not filed any appearance. Mr. Jacob indicated
2 that he has served Ecree by notifying K&L Gates your Honor. We
3 reached out to K&L Gates to find out about the initial
4 transaction as it related to the purchase of the condo; spoke
5 to a former partner at K&L Gates who is now with Novartis. Her
6 name is Marina Solo. M-A-R-I-N-A-S-O-L-O, I believe is the
7 spelling of her name, your Honor. She is on some of the
8 documents relating to the creation of Ecree. Attorney Solo
9 represented to me that K&L Gates is not and has not been the
10 agent for Ecree for over a year and a half. That was based on
11 a very simple call, your Honor, for the purpose simply to let
12 somehow Ecree know that there was a proceeding in which they,
13 as the lawful, innocent owners of the condominium, may lose the
14 condominium through these proceedings.

15 Prior to speaking to Ms. Solo, I also reached out to
16 Matthew Schiller, a former associate at K&L Gates, who gave me
17 the contact information for Marina Solo. Marina Solo also
18 represented to me, your Honor, that during the course of the
19 creation of Ecree, in the identification of the sources of
20 funds that were used for the purposes of purchasing the condo,
21 that they did their due diligence at K&L Gates, and there was
22 no evidence that any of the funds were being sourced from the
23 Republic of the Congo.

24 THE COURT: May I hear that again please, sir? I want
25 to make sure I understand how she can tell you this consistent

JCGQcomO

1 with any professional obligations that she may have to Ecree.

2 MR. SULLIVAN: She shared it, your Honor, voluntarily.
3 I asked her you know whether or not K&L Gates did any due
4 diligence, and she indicated that it did, and that there was no
5 evidence that any of the funds came from the Republic of Congo.
6 She was aware of the *Global Witness* report that suggested that
7 the funds were coming from the Republic of the Congo.

8 My client has clearly expressed to me that it has no
9 interest in the condo, your Honor, none

10 THE COURT: Which is interesting. Why then -- you'll
11 take this the right way. Why are you here? Because it's not
12 as though -- if you have no interest in it, it seems odd that
13 you're fighting so hard for the entity that elected not to show
14 up.

15 Now, your larger point, which I'm considering very
16 seriously, is that they just may not know because the wrong
17 people may have been served and eventually I will talk to
18 Mr. Jacob to speak about that issue, but you want to vacate the
19 certificate of default and to have me do what? Because I'm not
20 sure. You concede that the Republic owes a substantial amount
21 of money to the plaintiff in this case, correct?

22 MR. SULLIVAN: We can, your Honor, yes -- I'm sorry,
23 concede or we can see.

24 THE COURT: Both.

25 MR. SULLIVAN: OK. We certainly can see that it

JCGQcomO

1 appears based on an arbitration proceeding outside of the
2 United States that there is an arbitration award against the
3 Republic of Congo. That arbitration award continues to be
4 defended by the Republic of Congo by French lawyers. We have
5 no involvement there. They are looking -- as I understand it,
6 your Honor, the lawyers representing the Republic of the Congo
7 in France continues to look for avenues to have that award set
8 aside. I'm not standing before the Court representing that
9 they've identified any particular avenues in terms of having
10 the award set aside. I do know that there is an award, your
11 Honor, against the Republic.

12 THE COURT: Just to that point. The award was issued
13 at some point, I suppose -- oh, in or about 2000. It was in
14 the District of Columbia. I presume it was domesticated or
15 filed in 2013. Maybe there is something strange about this
16 award, but usually the time period for challenging isn't six
17 years long. So, I'm not sure what -- I appreciate that the
18 French people, the French attorneys are looking for ways to get
19 around it, but there's an award today, and it's been filed in
20 the district of the District of Columbia, and I'm not really
21 sure why it's not being paid on just because someone thinks
22 that some day really smart French people will figure out a way
23 out of paying it. That's fine. So, why don't you keep talking
24 because I still want to know why you're fighting over the condo
25 that you have no interest in.

JCGQcomO

1 MR. SULLIVAN: Your Honor, we're not fighting over the
2 condo because we don't have an interest in the condo. Why are
3 we here? Certainly for the Court to know that notwithstanding
4 that the Republic of the Congo has been defaulted, the Republic
5 of the Congo has no interest in the condominium. We think it
6 important for the Court to know that directly from the client.

7 Number two, your Honor, the filings in this case has
8 been very damaging against the Republic of Congo because the
9 filing is exclusively the *Global Witness* report, which we would
10 argue, your Honor, is uncorroborated and has an ulterior motive
11 as it relates to the Republic of the Congo and some of the
12 principals within the government of the Republic of the Congo.

13 So, the client believes it's important that its
14 reputation be defended to the extent that it can through an
15 opportunity to file something within the court, your Honor, as
16 it relates to the representation that the Republic of the Congo
17 was involved in some type of money laundering for the purpose
18 of purchasing this condo. So, that's critically important from
19 the client's perspective.

20 Also, as its relates to the claim representation that
21 the president's daughter somehow is complicit here as well in
22 terms of possibly being an owner of the condo, I would point
23 out to the Court, I'm not aware there has been any notice at
24 all provided to the daughter of the president. I get that
25 information, your Honor, in terms of the claimed some type of

JCGQcomO

1 ownership through the *Global Witness* report.

2 I'm not saying that the report is factually accurate.
3 In fact, we're disputing the statements in the *Global Witness*
4 report, but certainly if there is any accuracy there that the
5 daughter has some interest in the condo, then I would think
6 that some notice to the daughter would be important as well.

7 And then the final point, your Honor, again, interest
8 is principally around letting the Court know that the Republic
9 of the Congo has no interest in the condominium, is deciding
10 its options as it relates to Ecree.

11 The other thing we did, your Honor, because we were
12 concerned that Ecree was not aware of these proceedings, we
13 reached out to Ecree's -- to Mr. Vega's counsel in Portugal,
14 your Honor. He was on trial and was not able to get back to us
15 in advance of this hearing. We located him and left a message
16 with him last week, your Honor.

17 We did have a quick meet-and-confer with Mr. Jacob in
18 advance of coming here. I asked if there was any evidence
19 beyond the *Global Witness* report that somehow tied the condo
20 into the Republic of the Congo, and he said at that time that
21 there was no other evidence besides the *Global Witness* report.
22 So, that's the reason why we're here, your Honor.

23 THE COURT: There is a certificate of default that's
24 been entered with respect to your client. I don't believe that
25 you've given me a written submission as to why it should be

JCGQcomO

1 vacated. Are you asking for leave to do so, or was it your
2 intention to make an oral application for its vacatur?

3 MR. SULLIVAN: I'm asking for leave to file something,
4 your Honor, with the Court.

5 THE COURT: Because I'm sure you heard Mr. Jacob when
6 this conference began and he was noting the significance that I
7 should deduce from the fact that no application was made. Did
8 you let him know at any point prior to this conference this
9 morning that it was your client's intention to move to vacate
10 the certificate of default?

11 MR. SULLIVAN: I don't believe I specifically
12 indicated that, your Honor. We indicated that we are
13 contesting the Republic of the Congo's interest in the
14 condominium.

15 THE COURT: And you have passed on to him as well the
16 information that you obtained regarding your efforts to speak
17 with representatives for the other defendant, Ecree?

18 MR. SULLIVAN: I don't believe I did, your Honor. I
19 did ask Mr. Jacob whether or not he reached out to anybody at
20 K&L Gates directly beyond the notice of service, and my memory
21 is, your Honor, he said he had not reached out to anybody at
22 K&L Gates.

23 THE COURT: OK. One moment, please.

24 (Pause)

25 THE COURT: Other things you'd like me to know at this

JCGQcomO

1 time, sir?

2 MR. SULLIVAN: Can I have a moment, your Honor?

3 THE COURT: Of course.

4 (Pause)

5 MR. SULLIVAN: Not at this time your Honor.

6 THE COURT: Thank you.

7 Mr. Jacob, let me hear you in response.

8 MR. JACOB: Thank you, your Honor.

9 In what I think is the order of importance, Ecree is a
10 New York limited liability company. Document 6 on the docket
11 of this case, which counsel did not refer to, is the affidavit
12 of service by which Ecree LLC was served through the New York
13 Secretary of State, which is the basic A B C of how you serve a
14 New York limited liability corporation.

15 Our service on K&L Gates, which we attempted in a
16 couple of ways, including having them refuse it, I should note,
17 and that's in the docket too, was done to ensure that the
18 lawyers who were responsible for this transaction, because they
19 are the registered agents of the condominium, were on notice
20 that this was happening. One would think at a firm like
21 K&L Gates, if we were wrong in what we were alleging, we would
22 have had an immediate telephone call from some aggrieved
23 attorney at K&L Gates explaining to me, Mr. Jacob, this is just
24 a misunderstanding; you've got it all wrong.

25 THE COURT: Yes, although perhaps that might be

JCGQcomO

1 explained by the fact that the principal attorney is now no
2 longer with the firm and is in-house somewhere.

3 MR. JACOB: We served them both in New York and in New
4 Jersey. We're aware of Ms. Solo because she was the name on
5 the condo agent designation, and she was in their office in
6 Newark, your Honor. But out of abundance of caution and
7 belt-and-suspenders, we attempted to serve K&L Gates in New
8 York as well to make sure we weren't missing something in case
9 no one was in the Newark office who knew about this. So we
10 served K&L Gates, or tried to, in both offices.

11 In terms of the Republic now applying to vacate the
12 default, today is the first I've heard of that. I respectfully
13 submit it's too late. Counsel appeared by letter on October 1,
14 I believe. One component of moving to vacate a default is your
15 diligence in doing so. And without invoking cynicism
16 inappropriately, I am concerned that this is a delay tactic,
17 and if they are given a lot of rope to do this, they will just
18 take advantage of it.

19 I respectfully further submit to get at what I think
20 is the crux of this, your Honor, that vacating the Republic's
21 default doesn't stop us from proceeding to sale against Ecree
22 because Ecree is the owner, they are defaulting, or they have
23 defaulted. No one has appeared. To suggest that no one knows
24 about this petition, when counsel himself says it's caused some
25 great reputational issue -- and I can come back to that --

JCGQcomO

1 simply belies the obvious.

2 The owner of the condominium is not stepping forward
3 to dispute the allegations in the petition. A country does not
4 have a reputational interest, and even if it did have a
5 reputational interest, a reputational interest is not a
6 property interest under some Supreme Court decisions of some
7 time ago. So, whatever interest they're defending, it is not
8 going to the heart of this case. The entity that owns the
9 condominium is not disputing the facts in the petition, and I
10 don't really want to delve deeply into the transactions unless
11 your Honor wants us to, but it's fairly clear that the
12 Brazilian entity of which counsel spoke so many highly was
13 overcharging the Congo for the services and the surplus went
14 through a shell Virgin Islands company and then went to Ecree.
15 And Ecree was incorporated almost immediately before the funds
16 came, and then it bought the co-op for \$7 million.

17 So, there's no explanation from counsel as to how the
18 money that Ecree has is legitimate. He is simply trying to
19 focus you on the first leg of the transaction and say, well,
20 that's a real company there in Brazil, so this is all OK. But
21 the further steps are not being explained, and who Ecree is is
22 not being explained. And the *Global Witness* article and the
23 *New York Times* article, which I don't think is unimportant,
24 because whatever counsel says about *Global Witness*, I do not
25 believe the same descriptors can be applied to the *New York*

JCGQcomO

1 Times, which published this article on the front page of the
2 business section, and I believe would have vetted it
3 sufficiently to satisfy the *New York Times* that this is a
4 legitimate set of facts.

5 And in applying to buy the condo, the condo
6 association was presented with letters of reference for the
7 daughter, Claudia, and the granddaughter. That doesn't make
8 them parties to the case. The owner is Ecree. Let's stick to
9 property interests here. So, I don't think we needed to serve
10 the daughter. And, again, assuming in some, frankly -- well,
11 let me not characterize it. According to counsel, this is a
12 big deal in the Congo somehow vis-a-vis reputation. Counsel
13 have been on the case now since the 1st of October. Someone
14 could have intervened if they think they have an interest.
15 Nothing has been done, except apparently conversations with
16 alleged witnesses that I'm hearing about for the first time
17 today.

18 So, I again request that we be allowed to proceed to
19 default against Ecree. Your Honor may let counsel make the
20 application to vacate as against the Republic. I submit it's
21 untimely, but it's a Rule 55 application, your Honor. They're
22 not that easy to win under these circumstances where it's been
23 months, they've known about it, and they have to make a showing
24 among the merits. So we will certainly oppose that. But
25 whatever you do in that regard, I would just ask it be done on

JCGQcomO

1 a reasonably timely time frame because we've been waiting to
2 try and proceed with a sale if we can satisfy the Court that
3 we've fulfilled the steps and explained to the Court the steps
4 under the CPLR. Again, I'll come back to the CPLR if your
5 Honor wants today. But with respect to what counsel is saying,
6 we don't agree at all. Ecree was properly served. They're
7 defaulted. We should be allowed to proceed against them, and
8 the Republic is simply stalling for time.

9 One last item. This business about somebody in France
10 running around looking at the arbitration award, that award
11 pursuant to what's referred as the New York Convention was duly
12 converted into a judgment. Actually, there was more than one
13 award. There were two judgments in the District of Columbia.
14 These were not defaults, your Honor. You will notice, I
15 believe it's Exhibit 3 of the petition, in the same order that
16 holds the Republic in contempt, Chadbourne & Parke is relieved
17 from the case because Republic stopped paying Chadbourne &
18 Parke. So through the entry of the judgments in question, a
19 very capable law firm in the form of Chadbourne & Parke who was
20 representing the Republic, and asked to be let out because they
21 weren't getting paid and couldn't continue, and Judge Leon let
22 them out. However, since they hadn't provided discovery, he
23 also held the Republic in contempt, and so you have a
24 continuing contemnor in your court here today asking you for a
25 lot of judicial mercy, more than we think they are entitled to.

JCGQcomO

1 THE COURT: Well, wait, wait. Before you sit down,
2 two points from that. Number one, are you asking me to
3 consider the conduct in the District of Columbia in
4 ascertaining whether or not to vacate the certificate of
5 default as to the Republic in this case?

6 MR. JACOB: I'd like to see their papers first, but I
7 think we are entitled to at least point to a pattern of
8 behavior because we're here in proceedings in this court in aid
9 of a proceeding in sibling district court, and what happened in
10 that other court is not necessarily irrelevant here. So I
11 don't want to commit to what our opposition is going to be, but
12 yes, I certainly think if we can satisfy you that there is a
13 pattern of dilatory behavior by a judgment debtor, your Honor,
14 that's not unheard of in attempts to enforce judgments, and we
15 reserve the right to refer to that, sure.

16 THE COURT: Also, with respect to the petition itself
17 in the underlying arbitration awards -- there are two -- do I
18 understand correctly -- well, maybe I should understand
19 correctly. There were arbitration awards. Do you know when
20 they were issued, the two awards?

21 MR. JACOB: I believe the early two thousands. I
22 would need to look at the exact dates.

23 THE COURT: Would it be wrong for me to suppose that
24 the time to appeal those awards or to seek their vacatur has
25 lapsed?

JCGQcomO

1 MR. JACOB: I haven't specifically researched it, but
2 my understanding would be that it has lapsed.

3 THE COURT: OK. The two awards were reduced to
4 judgment in the District of Columbia. They were entered
5 pursuant to the New York Convention. Normally when I see that,
6 in this district, at least, it's done by a petition to confirm
7 an arbitration award. That's usually the time for the other
8 side to petition to vacate if they so care to do. There was
9 no -- was there a corresponding petition to vacate?

10 MR. JACOB: You're testing my memory, your Honor, but
11 I believe there was opposition, and there was confirmation of
12 the awards over the opposition. One thing I can say is that
13 there was no appeal. One thing I'm certain of is the time to
14 appeal the D.C. judgment that's elapsed. That's definitely
15 elapsed.

16 THE COURT: That's what I thought as well. I'm not
17 sure -- they may be looking for a way out among the French
18 attorneys. I just don't -- not necessarily in my case, not
19 necessarily in Judge Leon's case.

20 MR. JACOB: I would respectfully suggest that the
21 business about the French attorneys be disregarded by the
22 Court.

23 THE COURT: Well, I figured you would, but before I do
24 so, I want to be sure I'm doing that correctly.

25 All right. Let me return to Mr. Sullivan. Thank you.

JCGQcomO

1 Mr. Sullivan, if I were to grant you the opportunity
2 to make a written submission regarding vacatur of the
3 certificate of default, what do you think I should do with
4 respect to Ecree who has not appeared?

5 MR. SULLIVAN: I would ask the Court to ask Mr. Jacob
6 to provide notice to Mr. Vega's counsel in Portugal.

7 THE COURT: Why?

8 MR. SULLIVAN: So that they would have actual notice
9 of the proceedings.

10 THE COURT: Isn't that the point of -- I've done
11 default judgments based on notice to a secretary of state. I
12 guess what you're telling me is that even though Ecree has
13 allowed the secretary of state to serve as his agent, I should
14 nonetheless determine in this case that it's insufficient?
15 That's the concern I have. I appreciate what you're saying
16 about folks who either did or did not get notice about this.
17 It does sound like the K&L Gates firm did get notice, even if
18 they refused it. But my concern is I feel as though I would be
19 setting quite a troubling precedent if I were to find that in a
20 case in which a corporation has given agency to the New York
21 Secretary of State, that that's not enough. Is that something
22 I should find here? And, if so, why?

23 MR. SULLIVAN: I'm not suggesting you should find it's
24 not enough, your Honor. You asked the question. I'm not here
25 to defend Ecree. I want to make that clear, your Honor.

JCGQcomO

1 THE COURT: Of course. OK.

2 MR. SULLIVAN: Obviously, if Ecree is an innocent
3 owner of the property, and we argue that the Republic of Congo
4 has no interest in the property, and that the Republic of the
5 Congo funds were improperly diverted for the purpose of
6 purchasing the condo, your Honor, we would also want the Court
7 to know based upon our review, Ecree has been suspended as an
8 LLC for not filing some type of returns. I'm not sure, your
9 Honor, at what point in time Ecree was suspended.

10 Regarding Attorney Solo, your Honor, I didn't ask
11 Attorney Solo whether or not -- I want to be careful here, your
12 Honor. I can't recall, your Honor, if I did ask Ms. Solo if
13 she was at the firm at the time K&L Gates was served. I gave
14 her the dates. I don't recall her comments, your Honor, as to
15 whether or not she was served.

16 THE COURT: I'm not worried about Ms. Solo at this
17 time. She is not -- to the best of my understanding, her
18 current position forecloses her from representing Ecree at this
19 time, so I'm not worried about it.

20 MR. SULLIVAN: She did represent to me that they
21 stopped serving as Ecree's agent a year and a half ago.

22 THE COURT: Which is why all I've got today is the New
23 York Secretary of state.

24 MR. SULLIVAN: Right. Which suggests that Ecree has
25 been in suspended status.

JCGQcomO

1 THE COURT: And yet, I still have nowhere else to
2 serve them.

3 Sir, if you get your wish, then am I not -- there is a
4 world in which I'm entering a default judgment against Ecree
5 and properties being turned over, and then, what, you're
6 fighting with folks at the front table on the issue of the
7 factual statements regarding your client's involvement or not--

8 MR. SULLIVAN: Correct.

9 THE COURT: -- in the source of funds.

10 MR. SULLIVAN: That's correct, your Honor. That is
11 really principally for the Court's benefit as it makes its
12 final determination as it relates to the transfer of the
13 property as owned by a third party.

14 THE COURT: But Mr. Jacob is telling me don't wait; to
15 let the property be turned over while we continue with your
16 client as to the factual basis -- the truth or not, the
17 accuracy or not of the factual statements made in the petition,
18 correct?

19 MS. WEST: I'm sorry, your Honor.

20 THE COURT: I'll say that again, and I'll try and be
21 more coherent.

22 I believe what Mr. Jacob would like me to do -- well,
23 first, he'd like me to tell you, no way, you can't file your
24 written submission. I feel a little disquieted about doing
25 that. But in the alternative, what he's saying is fine, let

JCGQcomO

1 him file his submission that you should deny, but let the
2 turnover take place with respect to Ecree. Let there be a
3 default judgment as to Ecree because they have done nothing.

4 I think what you're saying to me, sir, is you want me
5 to keep open the Ecree side of the equation while you fight out
6 the factual niceties of the statements in the petition,
7 correct?

8 MR. SULLIVAN: Only to the extent of our filings, your
9 Honor, and then you can rely on our filings and make a final
10 determination as it relates to a turnover of the property
11 notwithstanding our filings.

12 THE COURT: Yes, although that itself seems somewhat
13 strange because what I'm being asked to do is that even though
14 Ecree does not care enough to fight in this court, I am
15 supposed to consider filings you have not made yet in -- you're
16 defending them without having that as your principal purpose.

17 MR. SULLIVAN: Again, it's not my intent to defend
18 Ecree, your Honor.

19 THE COURT: I know. I understand that.

20 MR. SULLIVAN: But I think it would be -- and I know
21 you indicate that Ecree has notice from the secretary of state
22 notice provisions. I understand notice from the secretary of
23 case. I don't know whether not Ecree has noticed the actual
24 Mr. Vega. And certainly, your Honor, we will communicate with
25 Mr. Vega's attorney in Portugal that these proceedings are

JCGQcomO

1 going forward. If they have an interest in filings an
2 appearance, they can do that on their own.

3 THE COURT: Won't they figure it out?

4 MR. SULLIVAN: Well, your Honor, Mr. Jacob indicated
5 that the issue concerning defamation came about as a result of
6 this litigation in this court. And I would argue, your Honor,
7 the issue concerning defamation against the Republic of Congo
8 by the *Global Witness* article occurred prior to the filing in
9 this proceeding. In fact, the Republic of the Congo's response
10 to the *Global Witness* story predated the filing of these
11 proceedings in this court. I think it was on, I think around
12 April 10, your Honor, that the Republic of Congo responded to
13 the allegations in the *Global Witness* report. They made it
14 clear in their response that they didn't own or have any
15 beneficial or financial interest in the condo.

16 And I am not disputing, your Honor, that Mr. Jacob
17 served certain representatives of the Republic of Congo's
18 government, but I will tell you, your Honor, when I met with
19 the justice minister after being retained, he was not aware of
20 these proceedings, the justice minister of the Republic of
21 Congo. At least he represented to me he was not aware of these
22 proceedings.

23 THE COURT: Was he aware of the underlying judgment,
24 sir?

25 MR. SULLIVAN: Oh, yes, he's absolutely aware of the

JCGQcomO

1 underlying judgments.

2 THE COURT: And he's aware that they've been filed in
3 the District of Columbia?

4 MR. SULLIVAN: Again, your Honor, I don't want to say
5 something that's not completely accurate.

6 THE COURT: I would prefer you not.

7 MR. SULLIVAN: I don't specifically recall a
8 discussion around the matter in the District of Columbia, but
9 he was certainly aware of the arbitration judgment, and I would
10 think that he would have been aware of the proceedings in the
11 District of Columbia because they did at some point in time
12 have counsel representing the Republic of the Congo, but I
13 don't recall specifically, your Honor, if I spoke to him about
14 it.

15 THE COURT: I will ask the question a little bit
16 differently. Remember, I am a lowly government employee, but
17 if I had a contempt judgment accruing at \$80,000 weekly, I
18 might notice it. Now, maybe in the scheme of debts here, it's
19 small potatoes, but he's not aware that his country has been
20 found in contempt of court here in the District of Columbia?
21 That's a strange one for me, but who knows? I don't want you
22 to divulge privileged communications.

23 Mr. Sullivan, I think I have your arguments, but while
24 I have you standing, I want to make sure I have your arguments.
25 If there's anything else you'd like to bring to my attention,

JCGQcomO

1 please tell me. If you need to consult with your co-counsel,
2 that's fine. Please do.

3 MR. SULLIVAN: I think at this point in time, your
4 Honor, we have nothing further. Thank you.

5 THE COURT: Thank you so much.

6 Mr. Jacob?

7 MR. JACOB: Thank you, your Honor.

8 Just two things: First, the service on the Republic
9 was to the minister of foreign affairs. It was not on some low
10 functionary. And that's reflected in document 7 on the docket.
11 And that service was done by the clerk of this court, as it is
12 required to be under the Foreign Sovereign Immunities Act.

13 So, the minister of foreign affairs of the Republic
14 received our petition in a DHL delivery from the clerk of this
15 court, which I would submit is quite a bit of notice to a
16 foreign republic.

17 Second, I would just like to respond briefly and
18 further to your question about whether we would rely on the
19 contempt in opposition to their motion vacate the default, and
20 I would ask your Honor to play out where this is going to go if
21 you vacate the default as against the Republic. Again, Ecree
22 is over here, and we will like to proceed against them.

23 But if counsel were successful in the belated
24 application to vacate the default, we would have the absolute
25 right to discovery. Yet, we have an uncured contempt of court

JCGQcomO

1 for failure to provide discovery. And it would seem to me, at
2 a minimum, to permit proceedings in a reopened case upon a
3 vacated default, which we will oppose, and we don't think you
4 should do that, but since a necessary outcome of your granting
5 such an application would be our entitlement to discovery, we
6 would believe the Republic should be required to cure its
7 default, which is a discovery default in that that exists and
8 it is ongoing in the District of Columbia because that really
9 is a logical connection between vacating the default and the
10 contempt. We should not have to try to take discovery from
11 someone who is in contempt of court already in providing us
12 discovery.

13 Thank you, your Honor.

14 THE COURT: But what if it's different here? What if
15 they actually abide by my orders here? I don't know what
16 powers I have that Judge Leon does not have, but...

17 MR. JACOB: Well, I could hope. That would be great.

18 THE COURT: Understood. All right.

19 Counsel, thank you very much.

20 Mr. Sullivan, I'm going to ask you, please, to obtain
21 a transcript of this conference with whatever speed you think
22 is appropriate. I'm going to consider your application, and I
23 will issue an order, I hope before the end of the year. I
24 won't make any promises, but I want to think very seriously
25 about what each of you have said here today.

JCGQcomO

1 Is there anything else either of you wishes to bring
2 to my attention in this proceeding?

3 MR. JACOB: Yes, your Honor. If you will remember
4 from the order to show cause to papers -- I don't mean to test
5 your memory -- but there are really two purely administrative
6 matters that are open, and we would just ask your leave just to
7 resubmit those to get them taken care of. One is that one of
8 the judgments is denominated in euros, and under the New York
9 Judiciary law, and quite clear federal case law, the right next
10 step is to convert that into dollars, and we've submitted the
11 backup on that, if you will.

12 The other is the 28 U.S.C. 1610 certification on the
13 other judgment, which is just a finding that a reasonable time
14 has elapsed to start enforcing the judgment. And Judge Leon
15 has already granted that on one of the judgments, but the
16 action shifted up here before it was time to ask him to do it
17 on the other one. Again, I'm happy to submit an application on
18 that. Normally, that's a matter -- usually courts will say,
19 well, is three months enough? Is four months enough? Here,
20 it's already several years, and so we would submit that both of
21 these are really just administrative, but we would like your
22 leave just to submit those applications as soon as we're able,
23 within the next couple of weeks.

24 THE COURT: That's fine.

25 Mr. Sullivan, any objection to that?

JCGQcomO

1 MR. SULLIVAN: In terms of submitting them, we'd
2 certainly want to see them, your Honor. We are not here at
3 this point, your Honor, to argue any of those requests, but we
4 don't want to waive any rights that the Republic of Congo might
5 have as to Mr. Jacob's request.

6 THE COURT: Yes. The conversion to dollars I can't
7 imagine what you'd be fighting about. The certification
8 perhaps you might, but I'm not sure it would be a winning
9 fight.

10 Yes, Mr. Jacob. Within 30 days?

11 MR. JACOB: Thank you, your Honor.

12 THE COURT: Thank you.

13 Mr. Sullivan, something else?

14 MR. SULLIVAN: I just wanted the Court to know, this
15 not an attempt to delay any of the proceedings at all. As the
16 Court has pointed out, the Republic of Congo could have done
17 nothing at all. They've retained counsel, went to the expense
18 of retaining counsel. They could have let the condo be
19 transferred for purpose of satisfying a portion of the
20 arbitration award. In fact, the Republic of Congo believes it
21 is not their condo, so it would have known financial impact on
22 the Republic of Congo. They are here because they want to see
23 this matter, at least as it relates to them, pursued and
24 concluded without waiving any of its rights or defenses.

25 THE COURT: All right. Thank you all very much. We

JCGQcomO

1 are adjourned. Happy holidays.

2 MR. SULLIVAN: Thank you, your Honor. You too.

3 MR. JACOB: Thank you, your Honor.

4 (Adjourned)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25